

Censorship, Environmentalism and Steubenville

by Steve Landsburg

Here are three dilemmas about public policy:

Farnsworth McCrankypants just hates the idea that someone, somewhere might be looking at pornography. It's not that he thinks porn causes bad behavior; it's just the **idea** of other people's viewing habits that causes him deep psychic distress.

Ought Farnsworth's preferences be weighed in the balance when we make public policy? In other words, is the psychic harm to Farnsworth an argument for discouraging pornography through, say, taxation or regulation?

Question 1

Granola McMustardseed just hates the idea that someone, somewhere might be altering the natural state of a wilderness area. It's not that Granola ever plans to visit that area or to derive any other direct benefits from it; it's just the **idea** of wilderness desecration that causes her deep psychic distress.

Ought Granola's preferences be weighed in the balance when we make public policy? In other words, is the psychic harm to Granola an argument for discouraging, say, oil drilling in Alaska, either through taxes or regulation?

Question 2

Let's suppose that you, or I, or someone we love, or someone we care about from afar, is raped while unconscious in a way that causes no direct physical harm — no injury, no pregnancy, no disease transmission. (Note: The [Steubenville rape](#) victim, according to all the accounts I've read, was not even **aware** that she'd been sexually assaulted until she learned about it from the Internet some days later.)

Despite the lack of physical damage, we are shocked, appalled and horrified at the thought of being treated in this way, and suffer deep trauma as a result. Ought the law discourage such acts of rape? Should they be illegal?

Question 3

If your answers to questions 1, 2 and 3 were not all identical, what is the key difference among them?

Meta-Question

A. I have a strong visceral sense that Bob McCrankypants's issues are his own and ought not impinge on public policy. This makes it incumbent on me to think about where I draw the line — why should one sort of harm (e.g. a punch in the nose) be legally actionable and another (e.g. psychic distress over someone else's reading habits) not be? I've mused on this before (e.g. in the final chapter of [More Sex is Safer Sex](#)), but I think I've failed to draw a compelling bright line. That said, some clearly relevant issues are:

1. We have only Bob's word for the magnitude of his distress.
2. We don't want to encourage others to dredge up their own feelings of psychic harm, which might have lain safely buried in their unconsciousness until they noticed that conscious expressions of such feelings tend to get rewarded.

B. It seems crystal clear to me that there is no substantive difference between Bob and Granola. If Granola plans to hike the Alaskan wilderness, and if those plans are likely to be disrupted by oil drilling, that's a legitimate reason to discourage oil drilling (though of course there might be countervailing reasons to

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encourage it). But as long as she's sitting in her own living room fuming about other people's drilling habits, even as Bob sits in **his** living room fuming about other people's viewing habits, I see no reason why her fumes should get more public policy weight than his.

C. I'm having trouble articulating any good reason why Question 3 is substantially different from Questions 1 and 2. As long as I'm safely unconscious and therefore shielded from the costs of an assault, why **shouldn't** the rest of the world (or more specifically my attackers) be allowed to reap the benefits? And if the thought of those benefits makes me shudder, why should my shuddering be accorded any more public policy weight than Bob's or Granola's? We're still talking about strictly psychic harm, right?

D. It is, I think, a red herring to say that there's something peculiarly sacred about the boundaries of our bodies. Every time someone on my street turns on a porch light, trillions of photons penetrate my body. They cause me no physical harm and therefore the law does nothing to restrain them. Even if those trillions of tiny penetrations caused me deep psychic distress, the law would continue to ignore them, and I think there's a case for that (it's the same as the case for ignoring Bob McCrankypants's porn aversion). So for the issues we're discussing here, bodily penetration does not seem to be in some sort of special protected category.

E. One could of course raise a variety of practical issues. If we legalize the rape of unconscious people, we will create an incentive to render people unconscious. If you answered Question 3 differently than you answered Questions 1 and 2, was it because of this sort of thing? Or do you see some more fundamental difference among the three cases?

F. Followup question: If your answer depends on the (perfectly plausible) assertion that the trauma from learning you've been raped is of a different order of magnitude from the trauma suffered by Bob and Granola, would you be willing to legalize the rape of the unconscious in cases where the perpetrators take precautions to ensure the victim never learns about it?

Edited to add: Some commenters have suggested that Question 3, unlike Questions 1 and 2, involves a violation of property rights. This seems entirely wrong to me; in each case, there is a disputed property right — a dispute over who controls my computer, a dispute over who controls the wilderness, a dispute about who controls my body. To appeal to a "respect for property rights" solves nothing, since in each case the entire dispute is about what the property rights should be in the first place.